

FIRST REGULAR SESSION

# HOUSE BILL NO. 946

96TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE GUERNSEY.

2055L.011

D. ADAM CRUMBLISS, Chief Clerk

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## AN ACT

To repeal sections 276.416, 276.421, 276.436, 276.441, 276.446, and 411.280, RSMo, and to enact in lieu thereof four new sections relating to grain sale and storage, with penalty provisions.

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*Be it enacted by the General Assembly of the state of Missouri, as follows:*

Section A. Sections 276.416, 276.421, 276.436, 276.441, 276.446, and 411.280, RSMo, are repealed and four new sections enacted in lieu thereof, to be known as sections 276.421, 276.436, 276.441, and 411.280, to read as follows:

276.421. 1. All applications shall be accompanied by a true and accurate financial statement of the applicant, prepared within six months of the date of application, setting forth all the assets, liabilities and net worth of the applicant. **In the event that the applicant has been engaged in business as a grain dealer for at least one year, the financial statement shall set forth the aggregate dollar amount paid for grain purchased in Missouri and those states with whom Missouri has entered into contracts or agreements as authorized by section 276.566 during the last completed fiscal period of the applicant. In the event the applicant has been engaged in business for less than one year or has not previously engaged in business as a grain dealer, the financial statement shall set forth the estimated aggregate dollar amount to be paid for grain purchased in Missouri and those states with whom Missouri has entered into contracts or agreements as authorized by section 276.566 during the applicant's initial fiscal period.** All applications shall also be accompanied by a true and accurate statement of income and expenses for the applicant's most recently completed fiscal year. The financial statements required by this chapter shall be prepared in conformity with

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

15 generally accepted accounting principles; except that, the director may promulgate rules allowing  
16 for the valuation of assets by competent appraisal.

17         2. The financial statement required by subsection 1 of this section shall be audited or  
18 reviewed by a certified public accountant. The financial statement may not be audited or  
19 reviewed by the applicant, or an employee of the applicant, if an individual, or, if the applicant  
20 is a corporation or partnership, by an officer, shareholder, partner, or a direct employee of the  
21 applicant.

22         3. The director may require any additional information or verification with respect to the  
23 financial resources of the applicant as [he] **the director** deems necessary for the effective  
24 administration of this chapter. The director may promulgate rules setting forth minimum  
25 standards of acceptance for the various types of financial statements filed in accordance with the  
26 provisions of this chapter. The director may promulgate rules requiring a statement of retained  
27 earnings, a statement of changes in financial position, and notes and disclosures to the financial  
28 statements for all licensed grain dealers or all grain dealers required to be licensed. The  
29 additional information or verification referred to herein may include, but is not limited to,  
30 requiring that the financial statement information be reviewed or audited in accordance with  
31 standards established by the American Institute of Certified Public Accountants.

32         4. All grain dealers shall provide the director with a copy of all financial statements and  
33 updates to financial statements utilized to secure the bonds required by sections 276.401 to  
34 276.582.

35         5. All financial statements submitted to the director for the purposes of this chapter shall  
36 be accompanied by a certification by the applicant or the chief executive officer of the applicant,  
37 subject to the penalty provision set forth in subsection 4 of section 276.536, that to the best of  
38 his **or her** knowledge and belief the financial statement accurately reflects the financial condition  
39 of the applicant for the fiscal period covered in the statement.

40         6. Any person who knowingly prepares or assists in the preparation of an inaccurate or  
41 false financial statement which is submitted to the director for the purposes of this chapter, or  
42 who during the course of providing bookkeeping services or in reviewing or auditing a financial  
43 statement which is submitted to the director for the purposes of this chapter, becomes aware of  
44 false information in the financial statement and does not disclose in notes accompanying the  
45 financial statements that such false information exists, or does not disassociate himself **or**  
46 **herself** from the financial statements prior to submission, is guilty of a class C felony.  
47 Additionally, such persons are liable for any damages incurred by sellers of grain selling to a  
48 grain dealer who is licensed or allowed to maintain his **or her** license based upon inaccuracies  
49 or falsifications contained in the financial statement.

50 7. [Except as set forth in section 276.511 which mandates higher requirements for class  
51 I grain dealers,] Any licensed grain dealer or applicant for a grain dealer's license [who purchases  
52 less than four hundred thousand dollars worth of grain, during the dealer's last completed fiscal  
53 year, in the state of Missouri and those states with whom Missouri has entered into contracts or  
54 agreements as authorized by section 276.566 must] **shall** maintain a minimum net worth equal  
55 to [the greater of ten thousand dollars or] five percent of [such] **annual** grain purchases[. If grain  
56 purchases during the dealer's last completed fiscal year are four hundred thousand dollars or  
57 more, the dealer must maintain a net worth equal to the greater of twenty thousand dollars or one  
58 percent of grain purchases] **as set forth in the financial statements required by this chapter.**  
59 If the dealer or applicant is deficient in meeting this net worth requirement, he **or she** must post  
60 additional bond as required in section 276.436.

61 **8. (1) Any licensed grain dealer or applicant for a grain dealer's license shall have**  
62 **and maintain current assets at least equal to one hundred percent of current liabilities.**  
63 **The financial statement required by this chapter shall set forth positive working capital in**  
64 **the form of a current ratio of the total adjusted current assets to the total adjusted current**  
65 **liabilities of at least one to one.**

66 **(2) The director may allow applicants to offset negative working capital by**  
67 **increasing the grain dealer surety bond required by section 276.426 up to the total amount**  
68 **of negative working capital at the discretion of the director.**

69 **(3) Adjusted current assets shall be calculated by deducting from the stated current**  
70 **assets shown on the financial statement submitted by the applicant any current asset**  
71 **resulting from notes receivable from related persons, accounts receivable from related**  
72 **persons, stock subscriptions receivable, and any other related person receivables.**

73 **(4) A disallowed current asset shall be netted against any related liability and the**  
74 **net result, if an asset, shall be subtracted from the current assets.**

276.436. 1. The total amount of the surety bond required of a dealer licensed pursuant  
2 to sections 276.401 to 276.582 shall be established by the director by rule, but in no event shall  
3 such bond be less than [twenty] **fifty** thousand dollars nor more than [three] **six** hundred  
4 thousand dollars, except as authorized by other provisions of sections 276.401 to 276.582.

5 2. The formula for determining the amount of bond shall be established by the director  
6 by rule and shall be computed at a rate of no less than the principal amount to the nearest one  
7 thousand dollars, equal to [not less than one percent and not more than five] **two** percent of the  
8 aggregate dollar amount paid by the dealer for grain purchased in the state of Missouri and those  
9 states with whom Missouri has entered into contracts or agreements as authorized by section  
10 276.566 during the dealer's last completed fiscal year, or, in the case of a dealer who has been  
11 engaged in business as a grain dealer for less than one year or who has not previously engaged

12 in such business, [not less than one percent and not more than five] **two** percent of the estimated  
13 aggregate dollar amount to be paid by the dealer for grain purchased in the state of Missouri and  
14 those states with whom Missouri has entered into contracts or agreements as authorized by  
15 section 276.566 during the applicant's initial fiscal year.

16 3. Any licensed grain dealer or applicant who has, at any time, a net worth less than the  
17 amount required by subsection 7 of section 276.421, shall be required to obtain a surety bond in  
18 the amount of one thousand dollars for each one thousand dollars or fraction thereof of the net  
19 worth deficiency. Failure to post such additional bond is grounds for refusal to license or the  
20 suspension or revocation of a license issued under sections 276.401 to 276.582. This additional  
21 bond can be in addition to or greater than or both in addition to and greater than the maximum  
22 bond as set by this section.

23 4. The director may, when the question arises as to a grain dealer's ability to pay for grain  
24 purchased, require a grain dealer to post an additional bond in a dollar amount deemed  
25 appropriate by the director. Such additional bond can be in addition to or greater than or both  
26 in addition to and greater than the maximum bond as set by this section. The director must  
27 furnish to the dealer, by certified mail, a written statement of the reasons for requesting  
28 additional bond and the reasons for questioning the dealer's ability to pay. Failure to post such  
29 additional bond is a ground for modification, suspension or revocation by the director of a license  
30 issued under sections 276.401 to 276.582. The determination of insufficiency of a bond and of  
31 the amount of the additional bond shall be based upon evidence presented to the director that a  
32 dealer:

33 (1) Is or may be unable to meet his **or her** dollar or grain obligations as they become  
34 due;

35 (2) Has acted or is acting in a way which might lead to the impairment of his **or her**  
36 capital;

37 (3) As a result of his activity, inactivity, or purchasing and pricing practices and  
38 procedures, including, but not limited to, the dealer's deferred pricing or deferred payment  
39 practices and procedures, is or may be unable to honor his grain purchase obligations arising out  
40 of his **or her** dealer business. The amount of the additional bond required under this subsection  
41 shall not exceed the amount of the dealer's current loss position. Current loss position shall be  
42 the sum of the dealer's current liabilities less current assets or the amount by which he **or she** is  
43 currently unable to meet the grain purchase obligations arising out of his **or her** dealer business.

44 5. One bond, cumulative as to minimum requirements, may be given where a dealer has  
45 multiple licenses; except however, that in computing the amount of the single bond the grain  
46 dealer may add together the total purchases of grain of all locations to be covered thereby and  
47 use the aggregate total purchases for the fiscal year for the purpose of computing bond.

48 However, this single cumulative bond must be at least equal to [twenty] **fifty** thousand dollars  
49 per dealer license issued up to the [three] **six** hundred thousand dollar maximum bond amount  
50 specified in subsection 1 of this section. When a grain dealer elects to provide a single bond for  
51 a number of licensed locations, the total assets of all the licensed locations shall be subject to  
52 liabilities of each individual licensed location.

53 6. Failure of a grain dealer to provide and file a bond and financial statement and to keep  
54 such bond in force shall be grounds for the suspension or revocation, by the director, of a license  
55 issued under sections 276.401 to 276.582.

56 7. A dealer shall be required to post additional surety bond when he **or she** surpasses the  
57 estimated aggregate dollar amount to be paid for grain purchased as set forth in subsection 2 of  
58 this section. Such additional bond shall be determined by the director so as to effectively protect  
59 sellers of grain dealing with such dealer.

276.441. 1. Any grain dealer who is of the opinion that his **or her** net worth is sufficient  
2 to guarantee payment for grain purchased by him **or her** may make a formal, written request to  
3 the director that he **or she** be relieved of the obligation of filing a bond in excess of the minimum  
4 bond of [twenty] **fifty** thousand dollars. Such request shall be accompanied by a financial  
5 statement of the applicant, prepared within four months of the date of such request and  
6 accompanied by such additional information concerning the applicant and his **or her** finances  
7 as the director may require which may include the request for submission of a financial statement  
8 audited by a public accountant.

9 2. If such financial statement discloses a net worth equal to at least five times the amount  
10 of the bond otherwise required by sections 276.401 to 276.582, and the director is otherwise  
11 satisfied as to the financial ability and resources of the applicant, the director may waive that  
12 portion of the required bond in excess of [twenty] **fifty** thousand dollars for each license issued.

411.280. Every warehouseman licensed under the provisions of this chapter shall have  
2 and maintain a net worth equal to the greater of ten thousand dollars or the amount which results  
3 from multiplying the storage capacity of the warehouse by [fifteen] **twenty-five** cents per bushel.  
4 Capital stock, for the purpose of determining the net worth, shall not be considered a liability.  
5 Any deficiency in required net worth above the ten thousand dollar minimum requirement may  
6 be met by supplying additional bond in an amount equal to one thousand dollars for each one  
7 thousand dollars or fraction thereof of deficiency.

[276.416. In the event that the applicant has been engaged in business as  
2 a grain dealer for at least one year, the application shall set forth the aggregate  
3 dollar amount paid for grain purchased in Missouri and those states with whom  
4 Missouri has entered into contracts or agreements as authorized by section  
5 276.566 during the last completed fiscal period of the applicant. In the event the  
6 applicant has been engaged in business for less than one year or has not

7 previously engaged in business as a grain dealer, the application shall set forth the  
8 estimated aggregate dollar amount to be paid for grain purchased in Missouri and  
9 those states with whom Missouri has entered into contracts or agreements as  
10 authorized by section 276.566 during the applicant's initial fiscal period.]

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2 [276.446. Any grain dealer whose total purchases of grain within  
3 Missouri and those states with whom Missouri has entered into contracts or  
4 agreements as authorized by section 276.566 during any fiscal year, do not  
5 exceed an aggregate dollar amount of four hundred thousand dollars may satisfy  
6 the bonding requirements of sections 276.401 to 276.581 by filing with the  
7 director a bond at the rate of one thousand dollars for each twenty thousand  
8 dollars or fraction thereof of the dollar amount to be purchased, with a minimum  
bond of ten thousand dollars required.]

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